STATE OF MICHIGAN

COURT OF APPEALS

ROBERT DANTUMA and SHELLY DANTUMA,

Plaintiffs-Appellants,

v

SPECTRUM HEALTH, BUTTERWORTH OCCUPATIONAL HEALTH, INC., d/b/a SPECTRUM HEALTH OCCUPATIONAL SERVICES, and DR. ROBERT RICHMOND,

Defendants-Appellees.

UNPUBLISHED
October 25, 2005

No. 262867
Kent Circuit Court
LC No. 03-011366-NH

Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition to defendants. We affirm.

This case arises from a wrist injury sustained by plaintiff Robert Dantuma (Dantuma) on March 12, 2002, while he was working as a delivery driver for S. Abraham and Sons, Inc. (Abraham). Dantuma was treated at defendant Spectrum Health Occupational Services, where his injury was diagnosed as a sprain and treated with a splint. On March 27, 2002, defendant Dr. Robert Richmond imposed weight and repetitive movement restrictions. The next day, after learning that he would be assigned to work in a warehouse if the restrictions remained in place, Dantuma returned to Spectrum, and a physician's assistant granted his request to remove the restrictions. Dantuma subsequently used a combination of personal days and regular leave days to go to Florida with his wife. Dantuma called an employee at Abraham in the evenings to request personal days off, but he did not speak with a supervisor. Dantuma saw Dr. Richmond after he returned from Florida, and Dr. Richmond assessed the sprain as functionally stable. Dantuma worked the week of April 8, 2002, without restrictions, but was discharged from his employment on April 12, 2002.

After Dantuma was discharged from his employment with Abraham, Dr. William Petersen, a hand surgeon, diagnosed Dantuma's injury as a ligament tear. Dantuma had surgery to repair the injury but continued to have diminished grip strength.

Dantuma and Abraham subsequently settled a claim for compensation and other benefits under the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.* Dantuma executed a separate writing stating that he voluntarily resigned from his employment with Abraham and that he waived "any and all . . . claims arising out of [Dantuma's] employment with S. Abraham & Sons, Inc."

Plaintiffs later filed this action, alleging medical malpractice by Dr. Richmond and Spectrum based on defendants' delay in the diagnosis and treatment of Dantuma's wrist injury. Plaintiffs alleged that the delay resulted in Dantuma's loss of employment because his employer fired him for "fak[ing] his injury" or "manipulat[ing] doctors." Plaintiffs subsequently filed an amended complaint adding a claim of ordinary negligence against defendants. Defendants moved for summary disposition under MCR 2.116(C)(10), alleging that any negligence on their part was not a cause of Dantuma's loss of employment, and also under MCR 2.116(C)(7), alleging that plaintiffs' action was barred by the earlier release executed by Dantuma. The trial court granted defendants' motions, dismissing both counts in plaintiffs' amended complaint.

As plaintiffs state in their appellate brief, they "initiated this action alleging [d]efendants committed medical malpractice and ordinary negligence when they sent the Notification of Case Closing to [Abraham] resulting in the firing of . . . Dantuma." Plaintiffs argue that the trial court erred in finding no genuine issue of material fact regarding the theory that Dantuma's loss of employment with Abraham was proximately caused by the "notification of case closing" form. This form, completed by Spectrum, was addressed to the "Company Client." It stated that Dantuma "has been released to regular duties on _4-8-02_. He/she has fully recovered and is no longer in need of our services." Plaintiffs argue that the information in the form was contrary to the fact that Dantuma was not fully recovered from the wrist injury on April 8, 2002, and that the allegedly false information in the form led to Dantuma's discharge from employment.

We review de novo the trial court's grant of a motion for summary disposition under MCR 2.116(C)(10). *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). A motion under this subrule tests the factual sufficiency of a plaintiff's claim. *Id.* at 163. We must view the evidence in the light most favorable to the plaintiff and determine whether there is a genuine triable issue regarding any material fact. *Id.* at 164.

"'Proximate cause' is a legal term of art that incorporates both cause in fact and legal (or 'proximate') cause." *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004). In general, the cause in fact element requires a showing that, but for the defendant's act or omission, the plaintiff's injury would not have occurred. *Id.* at 86-87. A plaintiff must set forth specific facts to support a reasonable inference of a logical sequence of cause and effect. *Id.* at 87. Legal or "proximate" causation generally involves an examination of the foreseeability of the consequences of the act or omission and whether the defendant should be held legally responsible for the consequences. *Id.* at 87.

Upon de novo review, we hold that plaintiffs failed to establish a genuine of issue of material fact concerning the threshold requirement of cause in fact. While we agree with plaintiffs that they were not required to disprove defendants' theory of the case, there nevertheless must be evidence that excludes other reasonable hypotheses with a fair amount of certainty. *Id.* at 87-88. This standard recognizes that circumstantial evidence may be sufficient to establish causation if the chain of circumstances leads to a conclusion that is more probable

than other hypotheses reflected by the evidence. *Skinner v Square D Co*, 445 Mich 153, 166; 516 NW2d 475 (1994).

Also, a plaintiff's theory must not be mere conjecture. See *Wilson v Alpena Co Rd Comm*, 263 Mich App 141, 151; 687 NW2d 380 (2004), lv gtd 472 Mich 899 (2005). Conjecture is an explanation consistent with known facts but not deducible from them as a reasonable inference. *Skinner, supra* at 164.

In this case, plaintiffs offered no direct evidence that the information in the "notification of case closing" form caused Abraham to discharge Dantuma from his employment. Moreover, plaintiffs showed only a temporal relationship between the April 8, 2002, form, completed by an unidentified agent of Spectrum, and Dantuma's April 12, 2002, discharge from employment. This was insufficient to establish a causal relationship. See, generally, *Craig, supra* at 93 ("[i]t is axiomatic in logic and in science that correlation is not causation"). Plaintiffs did not establish that any person involved in the discharge decision had knowledge of the contents of the form or acted on it to terminate Dantuma's employment. It cannot be reasonably inferred from plaintiffs' testimony in their respective depositions about one of the decision makers stating that Dantuma "manipulated doctors" and "let down fellow drivers" that the "notification of case closing" form was a cause in fact of the discharge decision.

Also, plaintiffs did not sufficiently exclude the reasonable hypothesis that Dantuma was discharged for misusing Abraham's personal day point system to go to Florida, as averred in the affidavits of the individuals involved in the discharge decision. Indeed, Dantuma admittedly used personal days to go to Florida and called Abraham to take personal days when no supervisor was present with whom to speak.[1]

Viewed in a light most favorable to plaintiffs, the substantively admissible evidence did not create an issue of material fact with respect to the cause in fact element. The trial court properly granted defendants' motion for summary disposition under MCR 2.116(C)(10).

Plaintiffs additionally argue that the court misinterpreted MCL 600.2912a(2) and therefore erred in dismissing their medical malpractice claim. Given that the causation element of plaintiffs' lawsuit was lacking, as discussed above, we need not address this claim. Also, we need not address plaintiffs' argument that two physicians, Dr. Barry Weissglass and Dr. Kenneth Nelson, possessed the necessary qualifications to provide expert testimony in this case. Finally, we need not address plaintiffs' claim that the trial court erred in ruling that the release executed by Dantuma in connection with his settlement with Abraham barred the instant lawsuit.

[1] We note that Dantuma took his trip to Florida before the "notification of case closing" form had even been issued.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Alton T. Davis